

Civil Action No.: 5:17-cv-534

Defendant.

## COMPLAINT

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public display includes the right to show a copyrighted work, or a portion or an image of it, to the public. With a few exceptions that do not apply here, it is unlawful to make unauthorized derivative works, and to publicly display and/or publicly perform such works without the permission of the copyright owner. It is likewise unlawful to induce, cause, or materially contribute to the creation of unauthorized derivative works by others.

3. The Digital Millennium Copyright Act (“DMCA”) was enacted in 1998 to bring the Copyright Act into the digital age. Among other things, the DMCA provides that a copyright holder may send an Online Service Provider (an “OSP”) a written notification of claimed infringement (a “notice”) that provides the OSP with certain statutorily-mandated information about the infringement and serves as notice to the OSP that it is hosting content that infringes the copyright holder’s rights. In order to avoid potential secondary liability for hosting the infringing material, the OSP must remove that material after receiving the notice. In response to the removal, the user who posted material at issue may submit a counter notification stating that the material was removed due to mistake or misidentification. Once submitted, the counter-notification commences a 10-day period during which the copyright holder who submitted the notice must file an action against the user seeking to restrain the user from engaging in infringing activity. If the copyright holder does not file the action, the OSP is to restore the content at issue.

4. This is a copyright infringement and breach of contract case in which the Defendant is infringing Epic’s copyrights by injecting unauthorized computer code into the copyright protected code of Epic’s popular Fortnite® video game.<sup>1</sup> In so doing, Defendant is

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<sup>1</sup> Game names that are registered trademarks of Epic are shown with the federal registration symbol the first time each game name appears and without it thereafter.

creating unauthorized derivative works of Fortnite by modifying the game code and, thus, materially altering the game that the code creates and the experience of those who play it.

5. Further, Defendant is streaming videos of himself playing and cheating at Fortnite by using cheat software (“cheats” or “hacks”) to unlawfully modify Fortnite’s software. In the videos Defendant posts on YouTube, Defendant promotes and demonstrates a Fortnite cheat, and provides viewers with a link to a site from which they can acquire the cheat for themselves.

6. Defendant’s cheating, and his inducing and enabling of others to cheat, is ruining the game playing experience of players who do not cheat. The software that Defendant uses to cheat infringes Epic’s copyrights in the game and breaches the terms of the agreements to which Defendant agreed in order to have access to the game. The same is true for his unauthorized public display and performance of the unlawfully modified versions of Fortnite on YouTube.

7. Defendant has been banned from playing Fortnite for this conduct at least 14 times. He nevertheless continues to play using other accounts he created using false names. He has also continued to cheat and to publicly perform and display video of himself cheating on YouTube in an effort to induce others to buy the cheat he sells so that they too can cheat at Fortnite.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of Plaintiff’s federal claims under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Copyright Act, 17 U.S.C. §§ 106 and 501, *et. seq.* This Court has supplemental jurisdiction over Plaintiff’s related state law claims under 28 U.S.C. § 1367(a).

9. This Court has personal jurisdiction over Defendant because, as described below, Defendant agreed to be subject to the exercise of jurisdiction over him by the courts in this District. This Court also has personal jurisdiction over Defendant because Defendant has

purposefully availed himself of the privileges of conducting activities and doing business in North Carolina and in this District, thus invoking the benefits and protections of North Carolina's laws, by entering into contractual agreements with Epic in North Carolina, and repeatedly accessing Epic's servers, which are located in this District.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because this is a District in which a substantial part of the events giving rise to Plaintiffs' claims occurred, in which Defendant committed acts of copyright infringement, and/or where Plaintiffs' injuries were suffered. Venue is also proper in this District because, as described below, Defendant consented to venue in this District.

### **THE PARTIES**

11. Epic is a corporation duly organized and existing under the laws of the state of Maryland. Epic is registered to do business in North Carolina and has its principal place of business in Wake County, North Carolina.

12. On information and belief, Defendant Caleb Rogers, a.k.a. "Sky Orbit", is a citizen and resident of the United States.

### **FACTS APPLICABLE TO ALL CLAIMS**

#### **Epic and Fortnite**

13. Founded in 1991, Epic is a Cary, North Carolina-based developer and publisher of computer games and content creation software. Epic is recognized worldwide as the creator of the Unreal®, Gears of War®, and Infinity Blade® series of games. Epic is also globally known as the creator of the Unreal Engine® content creation engine software. More recently, Epic has released the multiplayer online battle arena game Paragon®, the virtual reality game Robo Recall®, and Fortnite.

14. Fortnite is a co-op survival and building action game that has been described as being “about exploration, scavenging gear, building fortified structures and fighting waves of encroaching monsters hellbent on killing you and your friends.”<sup>2</sup>

15. In Fortnite, players may join together online to build forts, weapons, and traps in an effort to rebuild and defend towns left vacant in the wake of “the Storm” from the monsters that populate the Fortnite world.

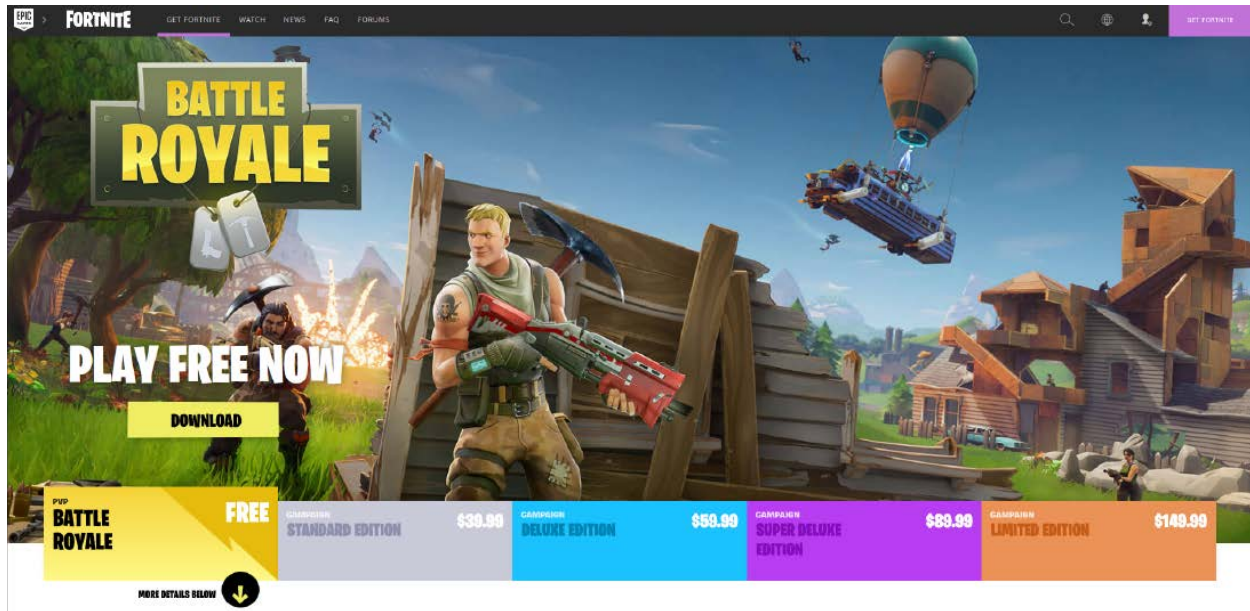
16. Fortnite was first released in a limited manner in October, 2013.

17. Fortnite was released broadly on July 25, 2017. Fortnite’s free-to-play “Battle Royale” game mode was released to the public on September 26, 2017.

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<sup>2</sup> Michael McWhertor, *Epic Games’ Fortnite will be the developer’s first Unreal Engine 4 game*, July 12, 2012, available at: <https://www.polygon.com/gaming/2012/7/12/3155138/epic-games-fortnite-will-be-the-developers-first-unreal-engine-4-game>

18. Fortnite has been extremely popular. It already has over ten million players and is on track to be Epic's most successful game yet. (A true and correct screen print from the Fortnite page on Epic's website [available at: <https://www.epicgames.com/fortnite/en-US/buy-now/battle-royale>] that provides a glimpse into Fortnite's violent and cartoonish world is pictured below at **Figure 1.**)



*Figure 1.*

19. Like other games in the “battle royale” genre, Fortnite's Battle Royale game mode involves dropping (in Fortnite, by glider from a flying “battle bus,” pictured above) a limited number of players into a large map. Fortnite's Battle Royale game mode combines Fortnite's building skills and destructible environments with intense player vs. player (“PvP”) combat. The players battle each other until only one player remains standing. That player wins the game.

20. In designing Fortnite's Battle Royale game mode, Epic made a conscious choice not to sell items to players that would give any player a competitive advantage in order to ensure a fair playing field for all players.

**Epic's Copyrights in Fortnite**

21. Epic is the author and owner of all the rights and title to the copyrights in Fortnite, including without limitation, in its computer software.

22. Epic's copyrights in various versions of Fortnite's computer code are the subjects of U.S. Copyright Registration Nos. TXu01-895-864 (dated December 18, 2013), TX008-186-254 (dated July 14, 2015), TX008-254-659 (dated March 3, 2016), and TX008-352-178 (dated December 23, 2016). (True and correct copies of these certificates of registration are attached hereto collectively as **Exhibit A.**)

**Epic's Terms of Service**

23. In order to play Fortnite on PC—which is the platform on which Defendant is accessing and cheating at Fortnite in this case—a user must first create an account with Epic. In order to create an account, a would-be user must affirmatively acknowledge that he or she has “read and agree[d] to the Terms of Service” (the “Terms”). (A true and correct copy of the Terms of Service is attached hereto as **Exhibit B.**)

24. The Terms apply to any use of, or access to, Fortnite using one's PC, as Defendant does in this case.

25. The Terms also apply to any use of Epic's websites by any “guest or registered users . . . including any content, functionality, products, and services offered on or through” Epic's websites. (*See id.* at 1.) This encompasses Epic's Fortnite website and its guests and registered users.

26. The Terms further apply to a user's “use of other Epic services that display or include the[] Terms.” (*Id.* at 1.) This too covers Fortnite and those who use it.

27. The Terms request that users read the Terms “carefully” before beginning to access or use Epic's services. (*Id.*)

28. The Terms provide that “[b]y using [Epic’s s]ervices, [the user] accept[s] and agree[s] to be bound and abide by these Terms . . .” (*Id.*) The Terms further provide that a user who does not want to agree to the Terms “must not use [Epic’s s]ervices.” (*Id.*)

29. The Terms include a section on “Governing Law and Jurisdiction,” which provides that “[a]ny dispute . . . arising out of or related to these Terms (“Claim”) shall be governed by North Carolina law . . . . Any legal suit, action, or proceeding arising out of, or related to, a [dispute or claim by the user arising out of or related to the Terms] shall be instituted exclusively in the federal courts of the United States or the courts of North Carolina, in each case located in Wake County.” (*Id.* at 4.)

30. This section of the Terms further provides that, by agreeing to the Terms, the user “agree[s] to waive any and all objections to the exercise of jurisdiction over [the user] by such courts and to venue in such courts.” (*Id.*)

31. The Terms explain that the services “including all content, features, and functionality thereof, are owned by Epic, its licensors, or other providers of such material and are protected by United States and international copyright . . . laws.” (*Id.* at 1.)

32. The Terms also inform the user that use and access of certain “software or services . . . may be subject to separate agreement . . . such as end user license agreements.” (*Id.*)

33. The Terms also include an “Intellectually Property Rights” section which sets forth the permissions users have with respect to Epic’s intellectual property and things that users are prohibited from doing. Specifically, the Terms provide that users:

- a. are “permitted to use [Epic’s s]ervices for [their] personal, non-commercial use only or legitimate business purposes related to your role as a current or prospective customer of Epic”; **but**



b. “must not copy, modify, create derivative works of, publicly display, publicly perform, republish, or transmit any of the material obtained through [Epic’s s]ervices, or delete, or alter any copyright, trademark, or other proprietary rights notices from copies of materials from [Epic’s s]ervices”; and

c. “must not reproduce, sell, or exploit for any commercial purposes any part of [Epic’s s]ervices, access to [Epic’s s]ervices or use of [Epic’s s]ervices or any services or materials available through Epic’s [s]ervices.” (*Id.* at 2.) (emphasis added).

34. The Terms further provide that users may use Epic’s services “only for lawful purposes and in accordance with these Terms of Service. [Users] agree not to access or use the [s]ervices for any purpose that is illegal or beyond the scope of the [s]ervices’ intended use . . .” (*Id.*)

35. By creating an account with Epic in order to access, download, and play Fortnite, and by using Epic’s services, including, without limitation, by playing Fortnite, Defendant agreed to be bound by the Terms. And by creating multiple accounts, as Defendant did here, Defendant agreed to be bound by the Terms multiple times.

36. The Terms constitutes a valid and binding contract between Defendant and Epic.

37. Defendant’s conduct described herein violates the Terms and breaches Defendant’s agreement with Epic.

**Fortnite End User License Agreement**

38. In order to play Fortnite on PC, as Defendant did here, a user must first acknowledge that he or she has read and agreed to abide by the terms in the Fortnite End User License Agreement for PC (“EULA”). (A true and correct copy of the EULA is attached hereto as **Exhibit C.**)

39. The EULA applies to any user who downloads, uses, or “otherwise indicates acceptance” of the EULA. (*Id.* at 1.)

40. Like the Terms, the EULA explicitly requests that individuals read the EULA “carefully.” (*Id.* at 1.) The EULA further makes clear that the EULA “is a legal document that explains [the user’s] rights and obligations” in connection with the access and use of Fortnite. (*Id.*)

41. The EULA includes a section titled “Governing Law and Jurisdiction” under which the user agrees that the EULA will be deemed to have been made and executed in the State of North Carolina. (*Id.* at 5-6.)

42. This section of the EULA further provides that “[a]ny action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in the Superior Court of Wake County, State of North Carolina or the United States District Court for the Eastern District of North Carolina.” (*Id.* at 6.)

43. Under this section of the EULA, the user agrees to the exclusive jurisdiction and venue of these courts. . . . [and to] waive any claim of inconvenient forum and any right to a jury trial. (*Id.*)

44. The EULA grants an individual user “a personal, non-exclusive, non-transferable, non-sublicensable limited right and license to install and use one copy of the Software on a device for [the user’s] personal entertainment use.” (*Id.*)

45. Epic also includes a “License Conditions” section in its EULA. (*Id.*) In that section, the EULA specifically defines certain prohibited activities and states that **a player may not:**

a. **use Fortnite “commercially or for a promotional purpose;”**

b. **“copy, reproduce, distribute, display, or use [Fortnite] in a way that is not expressly authorized in this Agreement;”**

c. **“reverse engineer, derive source code from, modify, adapt, translate, decompile, or disassemble it or make derivative works based on it;”**

d. **“remove, disable, circumvent, or modify any proprietary notice or label or security technology included in it;” or**

e. **“create, develop, distribute, or use any unauthorized software programs to gain advantage in any online or other game modes.”** (*Id.*) (emphasis added.)

46. By accessing, downloading and/or using Fortnite, Defendant agreed to be bound by the EULA.

47. Defendant also agreed to be bound by the EULA by affirmatively indicating his acceptance of its terms.

48. The EULA constitutes a valid and binding agreement between Epic Games and Defendant.

49. Defendant’s conduct described herein violates the terms of the EULA and breaches Defendant’s contract with Epic Games.

**The Defendant and His Unlawful Acts**

50. Defendant is a cheater.

51. On information and belief, Defendant uses cheat to unlawfully modify Fortnite’s software so that he has an unfair competitive advantage over other Fortnite players.

52. Cheats give a cheater power to do or see things that others players cannot. For instance, a cheat might enable the cheater to see through solid objects, teleport, impersonate

another player by “spoofing” that player’s user name, or make moves other players cannot, such as a spin followed by an instant headshot to another player.

53. Nobody likes a cheater. And nobody likes playing with cheaters. These axioms are particularly true in this case.

54. Epic does not allow or support cheats in Fortnite, including in the Battle Royale game mode.

55. Defendant downloaded and accessed Fortnite.

56. Defendant used the cheat in Fortnite to modify Fortnite’s copyrighted code.

57. Defendant used the cheat in a deliberate attempt to destroy the integrity of, and otherwise wreak havoc in, the Fortnite game. As Defendant intends, this often ruins the game for the other players.

58. Defendant created and posted several videos on YouTube to demonstrate, advertise, and distribute his cheat software.

59. Defendant operates at least two YouTube channels under the monikers “Sky Orbit” and “Sky Orbit V2.”

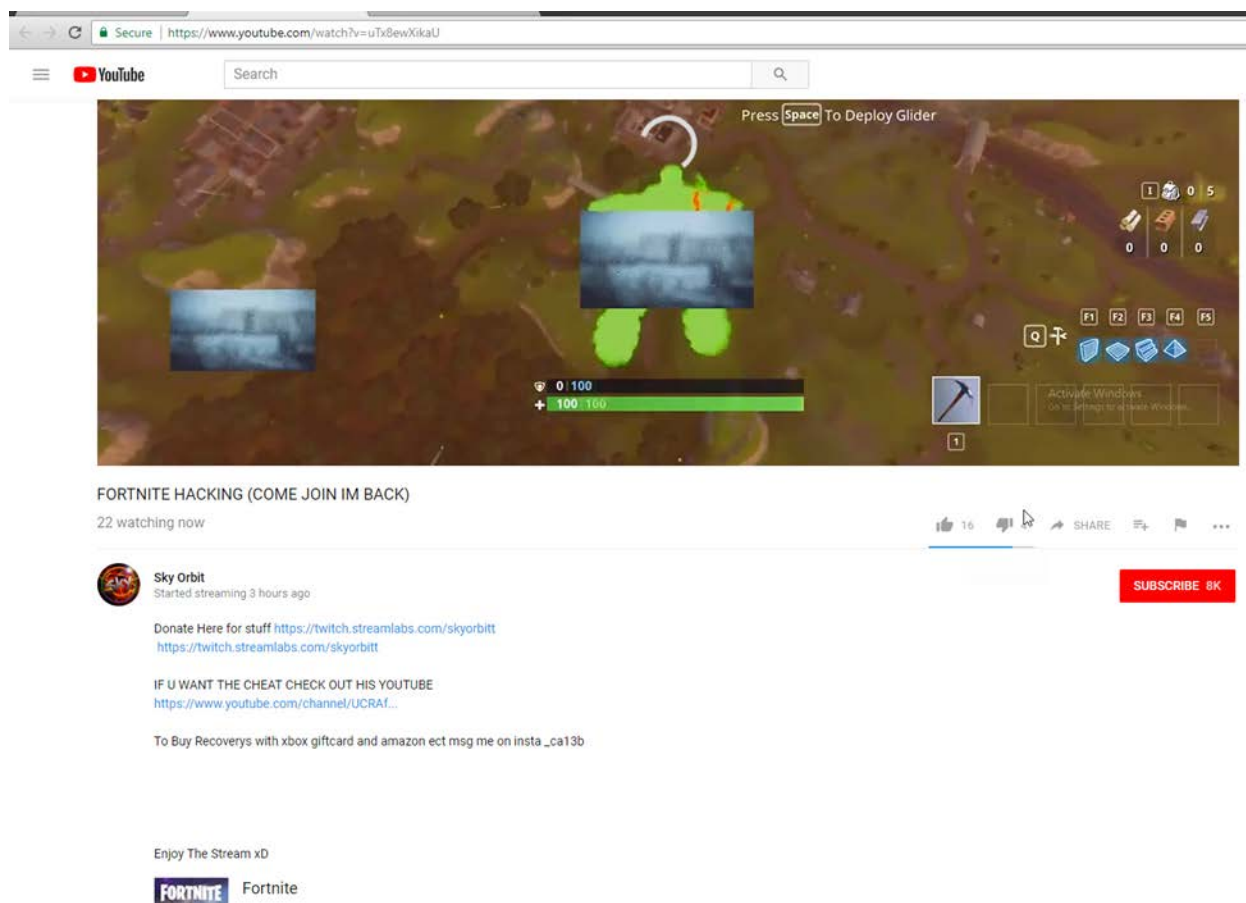
60. On October 14, 2017, Defendant used the Sky Orbit channel to post a live-stream video of himself cheating while playing Fortnite titled “FORTNITE HACKING (COME JOIN IM BACK)” (the “First Video”).<sup>3</sup> The First Video was available at: <http://www.youtube.com/watch?v=uTx8ewXikaU>.

61. During the First Video, Defendant demonstrated his use of the cheat to unlawfully modify the Fortnite game code, instructed viewers as to how to use the cheat in the same way, and provided viewers with a link to a location from which they could acquire the cheat for their own use. (A true and correct copy of a screen print from the First Video, as shown on

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<sup>3</sup> Errors in spelling, grammar, and punctuation that appear in this and other quotes from Defendant’s writings are from the original text.

Defendant's Sky Orbit YouTube channel, along with a link to the site from which the cheat was available for download is pictured directly below at **Figure 2.**)



**Figure 2.**

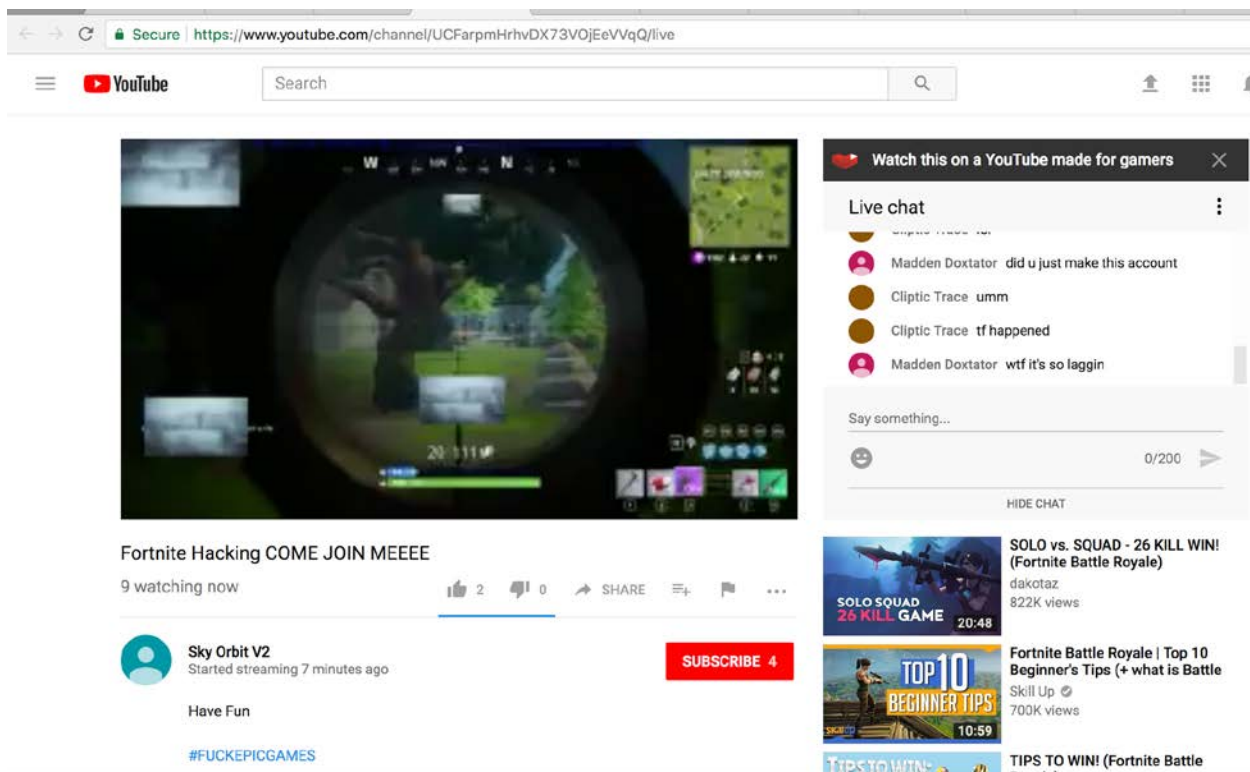
62. As can be seen in Figure 2, above, Defendant's "Sky Orbit" YouTube channel has at least 8,000 subscribers. These subscribers receive notifications every time a video, like the First Video, is posted. At the time the screen print was captured, at least 22 viewers were watching the First Video. (See Figure 2.)

63. On October 14, 2017, Epic submitted to YouTube a DMCA notice that included all the required elements. YouTube took the First Video down on the same day the notice was submitted.

64. After the First Video was taken down, Defendant posted a video entitled “Epicgames Falsely striked my channel” (the “Second Video”). In the Second Video, Defendant admitted to “hacking in Fortnite,” incorrectly claimed that his hacking is permitted under the doctrine of fair use, and publicly disclosed the email address of one of Epic’s in-house lawyers, in violation of YouTube’s community guidelines.

65. On October 14, 2017, Epic submitted a request that the Second Video be removed for violation of YouTube’s community guidelines.

66. Also on October 14, 2017, after the First Video had been taken down, Defendant used a different YouTube channel account, “Sky Orbit V2,” to post another live-stream of himself cheating while playing Fortnite, which he titled, “Fortnite Hacking COME JOIN MEEEE” (the “Third Video”). The Third Video was available at: <https://www.youtube.com/watch?v=7PpnJcrY3f0>. (A true and correct copy of a screen print from the Third Video, as shown on Defendant’s Sky Orbit V2 YouTube channel is pictured directly below at **Figure 3.**)



*Figure 3.*

67. On information and belief, Defendant created the Sky Orbit V2 channel in an attempt to circumvent YouTube's removal of the First Video posted on his Sky Orbit channel.

68. On October 14, 2017, Epic submitted a DMCA notice that included all the required elements. YouTube took down the Third Video the same day the notice was submitted.

69. On October 16, 2017, YouTube removed the Second Video because of Defendant's violation of YouTube's Community Guidelines.

70. On information and belief, the cheat software used by Defendant (and those whom Defendant induces to use such software) improperly injects unauthorized code into the active memory of the game as it runs. The cheat manipulates the functionality of the game and gives the cheater an unfair advantage over other players, changing and disrupting the game.

71. This unauthorized modification of the game's code as it runs on the cheater's computer and of the code that is sent back to Epic's servers materially changes both the game's

code and the audio visual aspects of the game generated by the code. These changes create a different version of the Fortnite game than the Fortnite game that is generated by Epic's copyright protected software.

72. In using cheat software to modify the game's code in this way, Defendant and other cheaters who use the cheat create unauthorized derivative works based on Fortnite in violation of the Copyright Act.

73. Use of the cheat software also violates the express terms of both the EULA and the Terms, both of which prohibit any modification of the game and the creation of derivative works based on Fortnite.

74. Defendant's posting of his First and Third Videos infringe Epic's exclusive rights to publicly display and/or publicly perform its copyrighted works in violation of the Copyright Act.

75. Defendant has been banned at least 14 times of for violating the Terms and the EULA. Defendant has circumvented this by creating numerous other accounts under false names and continues to play and cheat at Fortnite.

76. On October 17, 2017, Defendant submitted a counter-notification responding to Epic's DMCA takedown notice for the First Video in which he stated "i did noting rong this strike is all wrong I was modding in a video game that isn't against youtubes TOS Why was i striked !!!" (A true and correct copy of a screen print of Defendant's counter-notification with the contact information for Epic's in-house counsel and Defendant redacted is attached hereto as **Exhibit D.**)

77. Defendant has expressed animus towards Epic for enforcing its copyrights.

78. The description of Defendant's Third Video that appeared under Defendant's public broadcast of himself cheating at Fortnite after his initial live-stream during which he



demonstrated and advertised his cheat software had been taken down, included the hashtag “#FUCKEPICGAMES”. (See Figure 3, above.)

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **(Copyright Infringement in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*)**

79. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 78 of this complaint, as if set forth fully herein.

80. Epic is the author, creator and owner of all rights, title and interest in a number of valid, registered, and enforceable copyrights in Fortnite.

81. These copyrights are the subjects of the copyright registration certificates referenced above and attached hereto as Exhibit A, and are incorporated by reference as if fully set forth herein.

82. Defendant has had and continues to have access to Fortnite.

83. Defendant has infringed and continues to infringe Epic’s copyrights in Fortnite by improperly using computer software that injects code into Fortnite’s code which then materially modifies and changes Fortnite’s code, thereby creating an unauthorized derivative work of Epic’s copyrighted Fortnite code.

84. Epic never authorized Defendant to create derivative works based on Fortnite.

85. Defendant has also infringed Epic’s copyrights in Fortnite by publicly displaying, and/or publicly performing the unauthorized derivative works, which include Epic’s underlying copyrighted content, in at least the First and Third Videos as posted on YouTube.

86. Defendant’s submission of the DMCA counter notification, which requires YouTube to restore the infringing content unless Epic files an action seeking a court order to

restrain Defendant from engaging in infringing activity within 10 days, creates a continuing risk of copyright infringement.

87. Epic never authorized Defendant to publicly display or publicly perform the unauthorized derivative works.

88. In creating such unauthorized derivative works and by publicly displaying and/or publicly performing Defendant's unauthorized derivative works, Defendant has infringed Epic's copyrights and is liable to Epic for direct and willful infringement under 17 U.S.C. § 501, *et seq.*

89. On information and belief, Epic has suffered actual damages, including lost sales and profits as a result of Defendant's infringement.

90. In addition to Epic's actual damages, Epic is entitled to receive any additional profits made by Defendant from his wrongful acts pursuant to 17 U.S.C. § 504.

91. In the alternative, Epic is entitled to statutory damages pursuant to 17 U.S.C. § 504(c). These statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2) due to Defendant's willful infringement.

92. Defendant's conduct is causing, and unless enjoined and restrained by this Court, will continue to cause, Plaintiff's great and irreparable injury that cannot fully be compensated or measured in money. Epic has no adequate remedy at law for Defendant's wrongful conduct because (i) Epic's copyrights are unique and valuable property that have no readily determinable market value; (ii) Defendant's infringement constitutes an interference with Epic's goodwill and customer relations, and (iii) Defendant's wrongful conduct, and the damages resulting therefrom are continuing.

93. Moreover, the plain language of the DMCA requires that Plaintiff file an action seeking a court order to restrain Defendant from engaging in infringing activity within 10 days of Defendant's counter notification.

94. Therefore, Epic is entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order under 17 U.S.C. § 503(a) that prohibits Defendant from further infringing Epic's copyrights and orders Defendant to destroy all copies of infringing videos and the cheat he is using against Epic in violation of Epic's copyrights

95. Epic is also entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

**SECOND CLAIM FOR RELIEF**  
**(Contributory Copyright Infringement**  
**in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*)**

96. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 95 of this complaint, as if set forth fully herein.

97. As set forth above, Epic is the owner of valid, registered, and enforceable copyrights in Fortnite.

98. As also set forth above, Defendant has created and posted live-stream videos demonstrating his use of the cheat software in Fortnite, promoting other to use the cheat in Fortnite, and providing users a way to obtain the cheat.

99. As described above, this cheat software unlawfully modifies Fortnite's copyrighted code in a manner that infringes Epic's copyrights by creating unauthorized derivative works of Epic's Fortnite software.

100. By having provided users access to the cheat via his Sky Orbit Youtube Channel and the First Video, Defendant materially contributed to the direct infringement of Epic's copyrights, actively encouraged and induced other cheaters and would-be cheaters to access and use the cheat, and supported their use of the cheat on Fortnite.

101. Defendant has actual knowledge of the direct infringing activity of these other cheaters described above, and caused or contributed materially to, and/or participated substantially in, such direct infringement.

102. As set forth above, Defendant's submission of the DMCA counter notification, that requires YouTube to restore the First Video and its links to the cheat, which will induce and enable additional direct and contributory infringement unless Epic files an action within 10 days seeking a court order to restrain Defendant from engaging in, inducing, and contributing to such direct infringement, creates a continuing risk of contributory copyright infringement.

103. Defendant has engaged in his acts of contributory infringement with the actual and/or constructive knowledge that the preparation of derivative works based upon Epic's Fortnite software infringes Epic's copyrights in the software.

104. On information and belief, Defendant engages in such conduct to promote the cheat via his Sky Orbit and Sky Orbit V2 YouTube channels because Defendant obtains some financial benefit or value in consideration for his video postings and/or the sale of the cheat he promotes and demonstrates in the First and Third Videos.

105. Accordingly, Defendant is liable for contributory copyright infringement of Epic's Fortnite game.

106. On information and belief, Epic has suffered damages, including lost sales and profits, as a result of Defendant's contributory infringement.

107. On information and belief, Epic has suffered actual damages, including lost sales and profits as a result of Defendant's contributory infringement.

108. In addition to Epic's actual damages, Epic is entitled to receive any additional profits made by Defendant from his wrongful acts pursuant to 17 U.S.C. § 504.

109. In the alternative, Epic is entitled to statutory damages pursuant to 17 U.S.C. § 504(c). These statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2) due to the Defendant's willful contributory infringement.

110. As a result of Defendant's contributory copyright infringement, Epic has suffered and will continue to suffer, substantial and irreparable damage to its business reputation and good will, as well as actual losses in an amount not yet fully ascertained, but which will be further determined according to proof. Epic's remedy at law is not adequate to redress the harm Defendant has caused and will continue to cause unless and until his conduct is otherwise restrained and enjoined.

111. Moreover, the plain language of the DMCA requires that Plaintiff file an action seeking a court order to restrain Defendant from engaging in infringing activity within 10 days of Defendant's counter notification.

112. By reason of the foregoing, Epic is entitled to injunctive relief against Defendant pursuant to 17 U.S.C. § 502.

113. Epic is also entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

**THIRD CLAIM FOR RELIEF**  
**(Breach of Contract)**

114. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 113 of this complaint, as if set forth fully herein.

115. Access to and use of Epic's services, including Fortnite, is governed by and subject to the Terms.

116. Access to and use of Fortnite is also governed by and subject to the EULA.

117. In order to use Epic's services, including Fortnite, all users must "read and agree" to the Terms in order to create an account with Epic.

118. In order to access Fortnite, users must “read and agree” to the terms of the EULA.

119. Defendant agreed to the Terms and the EULA by creating an account with Epic, using and accessing Epic’s services, and/or downloading, playing, and/or accessing Fortnite. Therefore, the Terms and the EULA are both valid, enforceable contracts between Epic and the Defendant.

120. On information and belief, Defendant regularly used and accessed Epic’s services having knowledge that he was bound by the Terms and by the EULA.

121. Epic has performed all of its obligations under the Terms and the EULA.

122. Defendant has and has continued to knowingly, intentionally, and materially breach the Terms and EULA by, among other things,

- a. making derivative works based on Fortnite;
- b. copying, reproducing, distributing, displaying, using, modifying, performing, republishing, or transmitting Fortnite in a way not authorized in the EULA or the Terms; and/or
- c. creating, developing, distributing, or using unauthorized software programs to gain advantage in any online or other game modes.

123. As a direct result of Defendant’s breaches of the Terms and EULA, Epic has been, and will continue to be, harmed and is entitled to injunctive relief, compensatory damages, attorneys’ fees, costs, and/or other equitable relief against Defendant.

**FIFTH CLAIM FOR RELIEF**  
**(Intentional Interference with Contractual Relations)**

124. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 123 of this complaint, as if set forth fully herein.

125. As set forth above, in order to play Fortnite, a user must first create an account with Epic. To create an account, a user must agree to abide by the Terms. A user's agreement to abide the Terms creates a contract between Epic and the user.

126. The Terms expressly prohibit a user from **“copy[ing], modify[ing], creat[ing] derivative works of, publicly display[ing], publicly perform[ing], republish[ing] or transmit[ing] any of the material obtained through [Epic's s]ervices.”** (Exhibit B at 2) (emphasis added.)

127. In order to play Fortnite, a user must also agree to abide by the Fortnite EULA. A user's agreement to abide by the EULA also creates a contract between Epic and the user.

128. The EULA prohibits a player from **“reverse engineer[ing], deriv[ing] source code from, modify[ing], adapt[ing], translat[ing], decompil[ing,] or disassembl[ing] Fortnite or mak[ing] derivative works based on [Fortnite]”** and **“creat[ing], develop[ing], distribut[ing], or us[ing] any unauthorized software programs to gain advantage in any online or other game modes.”** (Exhibit C at 1) (emphasis added.)

129. Epic's contracts with its users are valid and enforceable.

130. On information and belief, Defendant has knowledge of the contracts between Epic and its registered users, and Defendant has knowledge of the previously recited prohibitions that the Terms and the EULA place on users since Defendant is a registered user of Epic's services and has agreed to the terms of both the EULA and the Terms.

131. Defendant, knowing that the use of cheat by Fortnite users breaches the contracts between Epic and its users, has intentionally and willfully encouraged and induced users of Fortnite to use the cheat.

132. Defendant, therefore, has intentionally interfered, and will continue to interfere, with the contracts formed between Epic and its users.

133. On information and belief, Defendant has acted without justification in intentionally interfering with the contracts between Epic and its users.

134. On information and belief, as a direct result of Defendant's actions, Epic has suffered damages in an amount to be proven at trial including, but not limited to, loss of goodwill among users of Epic's services, decreased profits, and lost profits from users whose accounts Epic has terminated for violations of the Terms and the Fortnite EULA.

135. As a direct result of Defendant's actions, Epic has sustained, and will continue to sustain, substantial, immediate, and irreparable injury for which there is no adequate remedy at law. Epic is entitled to injunctive relief to restrain and enjoin Defendant's continuing unlawful conduct.

136. Epic is further entitled to compensatory damages and any other available relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request judgment in its favor, and against Defendant, for the following:

1. Enter judgment in Plaintiff's favor and against Defendant on all claims herein;
2. Adjudge Defendant to have infringed Epic's copyrights in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*;
3. Adjudged Defendant to have contributorily infringed Epic's copyrights in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*;
4. Adjudge Defendant to have breached the Terms of Service and the Fortnite End User License Agreement in violation of North Carolina law;
5. Adjudge Defendant to have tortuously interfered with contracts between



Plaintiff and users of its services in violation of North Carolina law;

6. Declare that Defendant's infringement and other wrongdoings were willful in nature;

7. Enter an order pursuant to 17 U.S.C. § 502 that preliminarily and permanently enjoins Defendant from (i) infringing any of Epic's copyrighted works; and/or (ii) inducing or materially contributing to the direct infringement of any of Epic's copyrighted works by others;

8. Enter an order that preliminarily and permanently enjoins Defendant from (i) violating the Terms of Service; (ii) violating the EULA; and/or (iii) intentionally interfering with Epic's contractual relations with the other parties to those agreements;

9. Enter an order pursuant to 17 U.S.C. § 502 that preliminarily and permanently enjoins Defendant by requiring the destruction of all infringing videos and copies of cheats or hacks in Defendant's possession, custody, or control that can be used to infringe Epic's copyrights in Fortnite so as to restrain Defendant's continued violations of Epic's copyrights in Fortnite;

10. Enter an order pursuant to 17 U.S.C. § 504 requiring that (i) Defendant pay Epic the maximum amount of statutory damages permitted under 17 U.S.C. § 504, or, in the event that Epic elects to instead to recover actual damages and Defendant's additional profits from Defendant at any time before final judgment is rendered; and/or (ii) Defendant pay Epic's actual damages and Defendant's additional profits, together with interest, including pre-judgment, as fixed by the Court;

11. Enter an order pursuant to 17 U.S.C. § 505 awarding Epic its attorneys' fees, costs, and expenses; and

12. Award Plaintiff such other and further relief as the Court deems just and

proper.

This the 23rd day of October, 2017.

**PARKER POE ADAMS & BERNSTEIN LLP**

/s/Christopher M. Thomas

Christopher M. Thomas

N.C. Bar No. 31834

christhomas@parkerpoe.com

PNC Plaza

301 Fayetteville Street, Suite 1400 (27601)

P.O. Box 389

Raleigh, North Carolina 27602-0389

Telephone: (919) 835-4626

Facsimile: (919) 834-4564

*Attorney for Plaintiff Epic Games, Inc.*

# **EXHIBIT A**



# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

**Registration Number**  
**TXu 1-895-864**

**Effective date of  
registration:**  
December 18, 2013

**Title** \_\_\_\_\_

**Title of Work:** Fortnite

**Completion/Publication** \_\_\_\_\_

**Year of Completion:** 2013

**Author** \_\_\_\_\_

■ **Author:** Epic Games, Inc.

**Author Created:** computer program

**Work made for hire:** Yes

**Citizen of:** United States

**Domiciled in:** United States

**Copyright claimant** \_\_\_\_\_

**Copyright Claimant:** Epic Games, Inc.

620 Crossroads Boulevard, Cary, NC, 27518, United States

**Limitation of copyright claim** \_\_\_\_\_

**Material excluded from this claim:** computer program

**Previous registration and year:** TXu001848153 2012

TXu001812407 2012

**New material included in claim:** computer program

**Certification** \_\_\_\_\_

**Name:** Joseph Wilbur

**Date:** December 18, 2013



**Registration #:** TXU001895864  
**Service Request #:** 1-1053484835



Hunton & Williams LLP  
Douglas W. Kenyon  
P.O. Box 109  
Raleigh, NC 27602-109 United States



# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maura A. Pallante*

United States Register of Copyrights and Director

**Registration Number**

**TX 8-186-254**

**Effective Date of Registration:**

July 14, 2015

## Title

**Title of Work:** Fortnite

## Completion/Publication

**Year of Completion:** 2015

**Date of 1st Publication:** May 30, 2015

**Nation of 1st Publication:** United States

## Author

- Author:** Epic Games, Inc.  
**Author Created:** computer program  
**Work made for hire:** Yes  
**Citizen of:** United States  
**Domiciled in:** United States

## Copyright Claimant

**Copyright Claimant:** Epic Games, Inc.  
620 Crossroads Boulevard, Cary, NC, 27518, United States

## Limitation of copyright claim

**Material excluded from this claim:** computer program

**Previous registration and year:** TXu001895864, 2013

TXu001848153, 2012

**New material included in claim:** computer program

## Certification

**Name:** Joseph Wilbur

**Date:** July 14, 2015

**Correspondence:** Yes

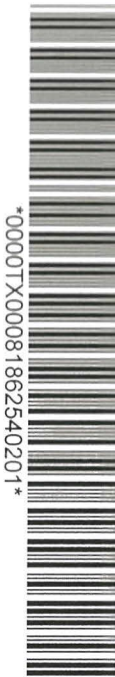
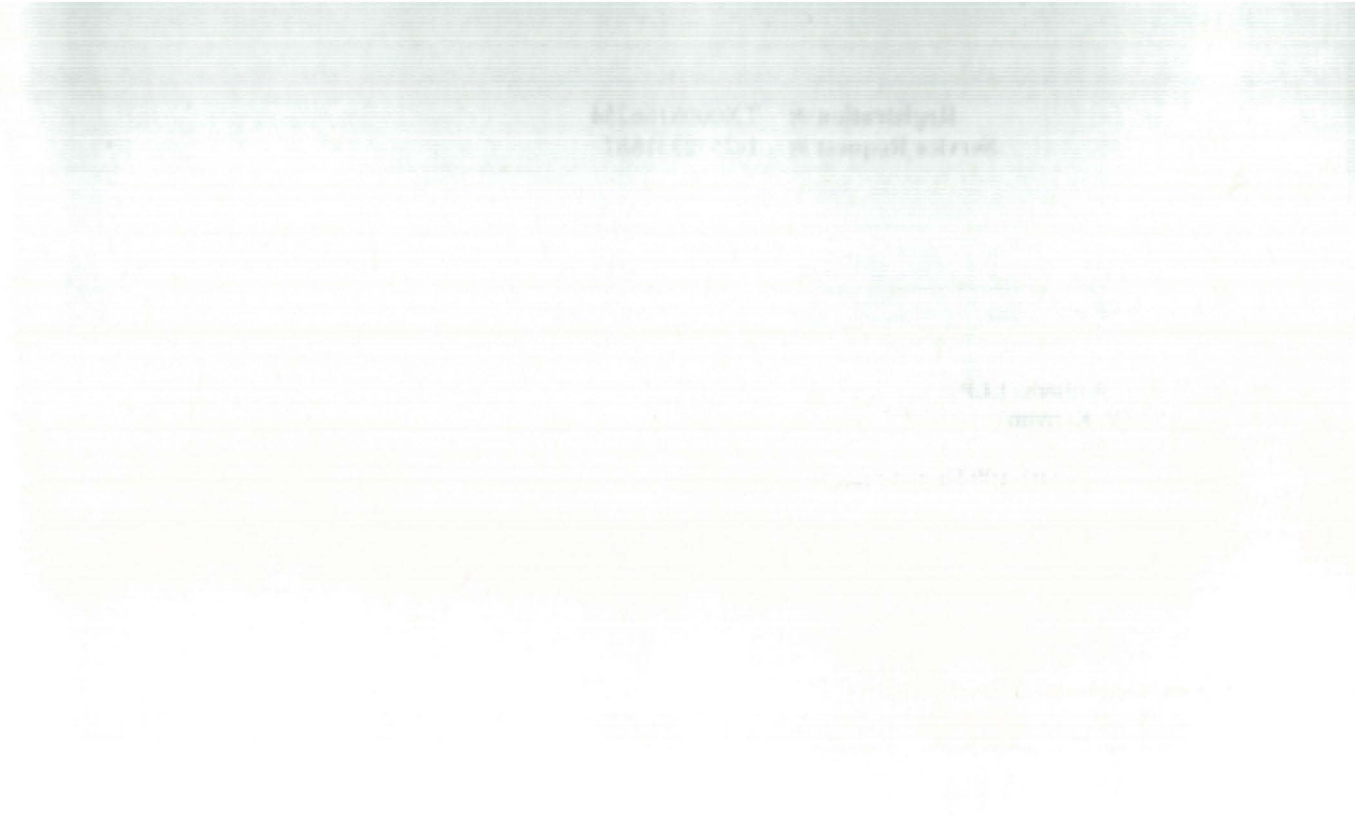


\*00001X00081862540202\*

**Registration #:** TX0008186254  
**Service Request #:** 1-2532331887

Hunton & Williams LLP  
Douglas W. Kenyon  
P.O. Box 109  
Raleigh, NC 27602-109 United States





\*0000TX00081862540201\*

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

United States Register of Copyrights and Director

**Registration Number**

**TX 8-254-659**

**Effective Date of Registration:**

March 03, 2016

## Title

**Title of Work:** Fortnite

## Completion/Publication

**Year of Completion:** 2015

**Date of 1st Publication:** May 30, 2015

**Nation of 1<sup>st</sup> Publication:** United States

## Author

- Author:** Epic Games, Inc.  
**Author Created:** computer program  
**Work made for hire:** Yes  
**Citizen of:** United States  
**Domiciled in:** United States

## Copyright Claimant

**Copyright Claimant:** Epic Games, Inc.  
620 Crossroads Boulevard, Raleigh, NC, 27518, United States

## Limitation of copyright claim

**Material excluded from this claim:** computer program  
**Previous registration and year:** TXu001895864, 2013  
TXu001848153, 2012

**New material included in claim:** computer program

## Certification

**Name:** Joseph Wilbur  
**Date:** March 03, 2016

**Correspondence:** Yes



\*00001X00082546590202\*



**Registration #:** TX0008254659  
**Service Request #:** 1-3176900287

Hunton & Williams LLP  
Douglas W. Kenyon  
P.O. Box 109  
Raleigh, NC 27602-109 United States



\*00001X00082546590201\*

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Karen Leigh Clayett*

Acting United States Register of Copyrights and Director

Registration Number

**TX 8-352-178**

Effective Date of Registration:

December 23, 2016

## Title

Title of Work: FORTNITE (2016 Rev. 2)

## Completion/Publication

Year of Completion: 2016

Date of 1st Publication: November 30, 2016

Nation of 1<sup>st</sup> Publication: United States

## Author

- Author: Epic Games, Inc.  
Author Created: computer program  
Work made for hire: Yes  
Citizen of: United States  
Domiciled in: United States

## Copyright Claimant

Copyright Claimant: Epic Games, Inc.  
620 Crossroads Boulevard, Cary, NC, 27518, United States

## Limitation of copyright claim

Material excluded from this claim: computer program

Previous registration and year: TX008-254-659, 2016  
TX008-186-254, 2015

New material included in claim: computer program

## Certification

Name: Joseph Wilbur

Date: December 23, 2016





\*0000TX00083521780202\*

**Registration #:** TX0008352178  
**Service Request #:** 1-4218625705

Hunton & Williams LLP  
Douglas W. Kenyon  
P.O. Box 109  
Raleigh, NC 27609-109 United States





\*0000TX00083521780201\*

# **EXHIBIT B**

## Terms of Service

### Acceptance of the Terms of Service

The following terms and conditions ("Terms") apply to your use of the websites of Epic Games, Inc. and its affiliates ("Epic", "we" "us" or "our"), including any content, functionality, products, and services offered on or through such websites (collectively, the "Website"), whether as a guest or a registered user. These Terms also apply to your use of other Epic services that display or include these Terms ("Additional Services"). In these Terms, the Website and Additional Services are collectively referred to as the "Services."

Please read these Terms carefully before you start to use the Services. By using the Services, you accept and agree to be bound and abide by these Terms of Service. If you do not want to agree to these Terms of Service, you must not use the Services.

In addition to these Terms, software or services that are included in or otherwise made available to you through the Services may be subject to separate agreement between you and Epic, such as end user license agreements. If these Terms are inconsistent with any such agreements, those agreements will control.

### Privacy Notice

Please review our Privacy Notice found at <https://www.epicgames.com/privacypolicy>, which also governs your use of the Services, to understand our practices.

### Changes to the Terms of Service

We may update these Terms from time to time; you should check this page regularly to take notice of any changes. Your continued use of the Services following the posting of revised Terms means that you accept and agree to the changes.

### Accessing the Services and Account Security

We may withdraw or amend the Services, and any related service or content, or restrict access (including by means of cancellation, termination, or modification, or suspension of a user account) to all or certain users (including you) without notice and without liability to you. Additionally, due to your geographic location, the Services or some of their features, services, or content may be unavailable to you.

To access certain Services, you will be asked to provide registration details or other information, and in order to use such resources, all the information you provide must be correct, current, and complete. From time to time, in order to access the Services or certain games, services, or functionality, Epic may require some or all users to download updated or additional software. The terms of use of such software may be subject to separate agreement between you and Epic.

If you choose, or are provided with, a user name, password, or any other piece of information as part of our security procedures, you must treat such information as confidential (other than user name), and you must not disclose it to others. You must immediately notify Epic (via [piracy@unrealengine.com](mailto:piracy@unrealengine.com)) of any unauthorized use of your user name or password or any other breach of security. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. You may only access the Services through your own account. Users do not own their accounts, and gifting or otherwise transferring of accounts or access keys is prohibited.

### Intellectual Property Rights

The Services, including all content, features, and functionality thereof, are owned by Epic, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, and other intellectual property or proprietary rights laws.

You are permitted to use the Services for your personal, non-commercial use only or legitimate business purposes related to your role as a current or prospective customer of Epic. Except as provided below, you must not copy, modify, create derivative works of, publicly display, publicly perform, republish, or transmit any of the material obtained through the Services, or delete, or alter any copyright, trademark, or other proprietary rights notices from copies of materials from the Services. However, if you are otherwise in compliance with these Terms, you are permitted to use, elsewhere and on other websites, an unaltered copy of portions of the content that is publicly available on the Website for the limited, non-commercial purpose of discussing such content.

You must not reproduce, sell, or exploit for any commercial purposes any part of the Services, access to the Services or use of the Services or any services or materials available through the Services. Epic's Fan Art and Fan Site Policy, found at <https://www.epicgames.com/about/fan-art-policy/>, governs non-commercial use of such content.

For clarity, the foregoing permissions are limited to the Services, and no rights are granted with respect to any servers, computers, or databases associated with the Services.

## **Billing, Payment and Epic Account Balance**

As used in this Section, if your primary residence is in the United States of America, then the term "Epic" means Epic Games, Inc., otherwise the term "Epic" means Epic Games International S.à r.l., acting through its Swiss branch. ALL CHARGES INCURRED IN CONNECTION WITH THE SERVICES AND ALL FUNDS PLACED IN THE EPIC ACCOUNT BALANCE ARE PAYABLE IN ADVANCE AND ARE NOT REFUNDABLE IN WHOLE OR IN PART, REGARDLESS OF THE PAYMENT METHOD, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR AS REQUIRED BY APPLICABLE LAW. Through the Services, Epic may make available a prepaid balance service ("Epic Account Balance"). Your Epic Account Balance may only be used to obtain certain products and services offered by Epic (excluding the Epic Store found at <http://www.epicgamesstore.com>). To access the Epic Account Balance you may be asked to provide registration details, including without limitation a Payment Method (defined below) and related billing address. You may only register for one (1) Epic Account Balance. You may use the following payment methods to place prepaid funds into your Epic Account Balance: credit card, prepaid payment card, promotional code, or any other payment method as specified by Epic ("Payment Method"). Any promotional code provided to you by Epic for use as a Payment Method may be subject to additional terms and conditions associated with the promotion, offer, or coupon. When you provide a Payment Method to Epic for use in connection with the Epic Account Balance, you represent to Epic that you are the authorized user of the Payment Method, and you authorize Epic to charge your Payment Method for any Epic Account Balance funds or other fees incurred by you. If your use of the Epic Account Balance is subject to any sales or other taxes, then Epic may also charge you for those taxes. You are responsible for all uses of your Epic Account Balance, including all applicable taxes and all purchases made by you or anyone else using your Epic Account Balance.

Within any twenty-four (24) hour period, the total amount stored in your Epic Account Balance plus the total amount spent out of your Epic Account Balance, in the aggregate, may not exceed US\$2,000 or its equivalent in your local currency. Epic reserves the right to change, modify, or otherwise impose usage limits to your Epic Account Balance at any time, in its sole discretion.

Epic Account Balance funds do not constitute a personal property right and have no value outside the Services. If you are refunded for an item purchased using Epic Account Balance funds, Epic will return the funds to your Epic Account Balance. Epic Account Balance funds are non-transferable to another person and do not accrue interest.

Epic reserves the right to suspend or terminate your Epic Account Balance if after investigation Epic determines in its sole discretion that you misused the Epic Account Balance, conducted unauthorized Epic Account Balance transactions from another user's Epic Account Balance, or used the Epic Account Balance to conduct any fraudulent or other illegal activity. In the event that your Epic Account Balance is terminated or suspended in accordance with these Terms for reasons other than fraudulent or other

illegal activity, Epic will return your remaining Epic Account Balance less any charges, fees, or other amounts owed to Epic. Otherwise, Epic Account Balances are not refundable and are not redeemable for money or monetary value from Epic or any other person or entity. Epic Account Balances that are deemed unclaimed property may be surrendered to the applicable authority, as required by applicable law.

## **Prohibited Uses**

You may use the Services only for lawful purposes and in accordance with these Terms of Service. You agree not to access or use the Services for any purpose that is illegal or beyond the scope of the Services' intended use (in Epic's sole judgment).

## **User Contributions**

The Services contain various forums, networks, and other interactive features that allow you to post, submit, publish, display, or transmit to Epic and other users ("Post") content or materials ("User Contributions") on or through the Services.

All User Contributions must comply with the following content standards: User Contributions must not be illegal, fraudulent, deceptive, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties or objectionable, and must not consist of or contain software viruses, commercial solicitation, chain letters, mass mailings, or any form of "spam."

Any User Contribution that you Post will be considered non-confidential and non-proprietary, and you grant Epic a nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use, copy, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such User Contribution throughout the world in any media; however, Epic will only share personal information that you provide in accordance with Epic's Privacy Notice found at <https://www.epicgames.com/privacynotice>.

You represent and warrant that you own or otherwise control all of the rights to the User Contributions that you Post at the time of Posting; that the User Contributions are accurate and not fraudulent or deceptive; and that the User Contributions do not violate these Terms or the rights (intellectual property rights or otherwise) of any third party, and will not cause injury to any person or entity. You understand that your User Contributions may be copied by other Services users and discussed on and outside of the Services, and if you do not have the right to submit User Contributions for such use, it may subject you to liability. Epic takes no responsibility and assumes no liability for any content Posted by you or any third party.

Epic has the right but not the obligation to monitor and edit or remove any User Contributions. Epic also has the right to terminate your access to all or part of the Services for any or no reason, including without limitation, any violation of these Terms.

## **Linking**

You may link to publicly available portions of the Services if you do so in a way that is fair and does not damage or take advantage of our reputation, but you must not establish a link in such a way as to suggest any form of association, approval, or endorsement on our part. The Services must not be framed on any other website or service. We reserve the right to withdraw linking permission without notice.

If the Services contain links to other sites and resources provided by third parties, these links are provided for your convenience only. We have no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them.

## **Disclaimer of Warranties**

The Services and all information, content, materials, products (including software), and other services included on or otherwise made available to you through the Services are provided by Epic on an “as is” and “as available” basis. Epic makes no representations or warranties of any kind, express or implied, as to the operation of the Services, or the information, content, materials, products (including software), or other services included on or otherwise made available to you through the Services. You expressly agree that your use of the Services is at your sole risk. To the full extent permissible by law, Epic disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. Epic does not warrant that the Services, information, content, materials, products (including software) or other services included on or otherwise made available to you through the Services, Epic’s servers, or electronic communications sent from Epic are free of viruses or other harmful components.

## **Limitation of Liability**

To the full extent permissible by law, Epic will not be liable for any loss of profits or any indirect, incidental, punitive, special or consequential damages arising out of or in connection with this Agreement. Further, to the full extent permissible by law, Epic’s aggregate liability arising out of or in connection with this Agreement will not exceed the total amounts you have paid (if any) to Epic under this Agreement during the twelve (12) months immediately preceding the events giving rise to such liability.

## **Indemnification**

You agree to defend, indemnify, and hold harmless Epic, its affiliates, and licensors, and their respective officers, directors, employees, contractors, agents, licensors, and suppliers from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys’ fees) resulting from your User Contributions or violation of these Terms.

## **Governing Law and Jurisdiction**

Any dispute or claim by you arising out of or related to these Terms (“Claim”) shall be governed by North Carolina law without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of, or related to, a Claim shall be instituted exclusively in the federal courts of the United States or the courts of North Carolina, in each case located in Wake County. You agree to waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

## **Language**

To the fullest extent permitted by law, the controlling language for these Terms is English. Any translation has been provided for your convenience.

## **Waiver and Severability**

No waiver of these Terms by Epic shall be deemed a further or continuing waiver of such term or condition or any other term or condition, and any failure of Epic to assert a right or provision under these Terms shall not constitute a waiver of such right or provision.

If any provision of these Terms is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of these Terms will continue in full force and effect.

## **Notice and Procedure for Making Claims of Copyright Infringement**

In accordance with the Digital Millennium Copyright Act (“DMCA”) and other applicable law, Epic has adopted a policy of terminating, in appropriate circumstances as determined by Epic, users or account holders who are deemed to be repeat infringers of the copyrights of others. Epic may also at its sole discretion limit access to the Services and/or update, transfer, suspend, or terminate the accounts of any

users who infringe the intellectual property rights of others, whether or not there is any repeat infringement.

If you believe that your work has been used on the Website or in any other Services in a way that constitutes copyright infringement, please submit a Notice of Alleged Infringement ("DMCA Notice") to our Designated Copyright Agent as follows:

Legal Department  
Epic Games, Inc.  
620 Crossroads Blvd.  
Cary, NC 27518  
Telephone: (919) 854-0070  
Email: [legal@epicgames.com](mailto:legal@epicgames.com)

Please include all of the following in your DMCA Notice:

- Identify the copyrighted work that you claim has been infringed. If your DMCA Notice covers multiple works, you may provide a representative list of such works.
- Identify the material that you claim is infringing, including a description of where the material is located. Your description must be reasonably sufficient to enable us to locate the material. Where possible, please include the URL of the webpage where the material is located.
- Provide your full legal name, mailing address, telephone number, and (if available) e-mail address.
- Include the following statement in the body of the DMCA Notice:
  - I have a good-faith belief that the use of the material is not authorized by the copyright owner, its agent, or the law. I represent that the information in this DMCA Notice is accurate and, under penalty of perjury, that I am the owner of the copyright or authorized to act on the copyright owner's behalf.
  - Provide your electronic or physical signature.

Please note that under 17 U.S.C. 512(f), if you knowingly misrepresent that material or activity is infringing, you may be liable for damages, including costs and attorneys' fees, incurred by us or our users. If you are unsure whether the material or activity you are reporting is infringing, you may wish to contact an attorney before filing a notification with us.

## General Questions

For general questions, contact us at [unrealengine.com/contact](http://unrealengine.com/contact).

## Epic Store Terms

The following terms apply to the Epic Store found at <http://www.epicgamesstore.com>:

### Orders and Payment

Washington residents will be charged 9.5% sales tax. Online orders may be executed with real-time credit card processing.

### Risk of Loss and Shipping

All items purchased from the Epic Store are made pursuant to a shipment contract. This means that the risk of loss and title for such items pass to you upon our delivery to the carrier. Check out our [Shipping page](#) for information on delivery times, rates, restrictions, and holiday schedules.

## **Return Policy**

Items in their original condition may be returned within 30 days of purchase for a full refund. Please return the items in the original shipping container with original packing materials to:

Epic Store Returns 3150 Elliott Ave. Suite 110 Seattle, WA 98121

Epic does not take title to returned items until the item arrives at such address.

## **Customer Service**

Have questions about the Epic Store, or need help? [Contact us with this form.](#)



# **EXHIBIT C**

## **Fortnite® End User License Agreement**

Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of the Software, including any Services you access or purchases you make through the Software. By downloading or using the Software, or by otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, please do not download or use this Software.

Your use of the Services is also governed by Epic's Terms of Service, which may be found at <https://www.epicgames.com/tos>. By downloading or using the Software, you also agree to Epic's Terms of Service.

Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 17.

If your primary residence is in the United States of America, your agreement is with Epic Games, Inc. If it is not in the United States of America, your agreement is with Epic Games International S.à r.l., acting through its Swiss branch.

### **1. License Grant**

Epic grants you a personal, non-exclusive, non-transferable, non-sublicensable limited right and license to install and use one copy of the Software on a device for your personal entertainment use (the "**License**"). The rights that Epic grants you under the License are subject to the terms of this Agreement, and you may only make use of the License if you comply with all applicable terms.

The License becomes effective on the date you accept this Agreement. The Software is licensed, not sold, to you under the License. The License does not grant you any title or ownership in the Software.

### **2. License Conditions**

You may not do any of the following with respect to the Software or any of its parts: (a) use it commercially or for a promotional purpose; (b) use it on more than one device at a time; (c) copy, reproduce, distribute, display, or use it in a way that is not expressly authorized in this Agreement; (d) sell, rent, lease, license, distribute, or otherwise transfer it; (e) reverse engineer, derive source code from, modify, adapt, translate, decompile, or disassemble it or make derivative works based on it; (f) remove, disable, circumvent, or modify any proprietary notice or label or security technology included in it; (g) create, develop, distribute, or use any unauthorized software programs to gain advantage in any online or other game modes; (h) use it to infringe or violate the rights of any third party, including but not limited to any intellectual property, publicity, or privacy rights; or (i) use, export, or re-export it in violation of any applicable law or regulation.

### 3. Updates and Patches

Epic may provide patches, updates, or upgrades to the Software that must be installed in order for you to continue to use the Software or Services. Epic may update the Software remotely without notifying you, and you hereby consent to Epic applying patches, updates, and upgrades. Epic may modify, suspend, discontinue, substitute, replace, or limit your access to any aspect of the Software or Services at any time. You acknowledge that your use of the Software or Services does not confer on you any interest, monetary or otherwise, in any aspect or feature of the Software or Services, including but not limited to any in-game rewards, achievements, character levels, Game Currency, or Content. You also acknowledge that any character data, game progress, game customization or other data related to your use of the Software or Services may cease to be available to you at any time without notice from Epic, including without limitation after a patch, update, or upgrade is applied by Epic. Epic does not have any maintenance or support obligations with respect to the Software or Services.

### 4. Game Currency and Content

Epic may offer you the ability to acquire licenses to in-game currency ("**Game Currency**") or Content, such as by: (a) purchasing a limited license to use Game Currency for a fee ("**Purchased Game Currency**"), (b) earning a limited license to use Game Currency by performing or accomplishing specific tasks in the Software, or (c) purchasing for a fee, exchanging Game Currency for, or earning a limited license to use Content. Also, Epic may facilitate the exchange of certain Content through the Software, in some cases for a fee. You may only use such Game Currency or Content if you pay the associated fee (if any). When you earn or pay the fee to obtain such Game Currency or Content, you are obtaining or purchasing from Epic the right to have your License include such Game Currency or Content. Regardless of any references Epic may make outside this Agreement to purchasing or selling Game Currency or Content, both Game Currency and Content are licensed, not sold, to you under the License. Use of an Epic Account Balance to purchase Game Currency or Content is subject to Epic's Terms of Service.

Neither Game Currency nor Content are redeemable for money or monetary value from Epic or any other person, except as otherwise required by applicable law. Game Currency and Content do not have an equivalent value in real currency and do not act as a substitute for real currency. Neither Epic nor any other person or entity has any obligation to exchange Game Currency or Content for anything of value, including, but not limited to, real currency. You agree that Epic may engage in actions that may impact the perceived value or purchase price, if applicable, of Game Currency and Content at any time, except as prohibited by applicable law.

All purchases of Purchased Game Currency and Content are final and are not refundable, transferable, or exchangeable under any circumstances, except as otherwise required by applicable law. Epic, in its sole discretion, may impose limits on the amount of Game Currency or Content that may be purchased, earned, accumulated, redeemed or otherwise used.

Except as otherwise prohibited by applicable law, Epic, in its sole discretion, has the absolute right to manage, modify, substitute, replace, suspend, cancel or eliminate Game Currency or

Content, including your ability to access or use Game Currency or Content, without notice or liability to you. You may not transfer, sell, gift, exchange, trade, lease, sublicense, or rent Game Currency or Content except within the Software and as expressly permitted by Epic. Except as otherwise prohibited by applicable law, Epic reserves and retains all rights, title, and interest in and to the Game Currency and Content. The license to Game Currency and Content under the License will terminate upon termination of the License and as otherwise provided herein.

When you provide payment information to Epic or its authorized processor, you represent that you are an authorized user of the payment card, PIN, key, account or other payment method specified by you, and you authorize Epic to charge such payment method for the full amount of the transaction.

## **5. User Generated Content**

Any content that you create, generate, or make available through the Software or the Services, including buildings, chat posts, character data, game customization, in-game constructions, and screenshots, shall be “UGC”. You hereby grant to Epic a non-exclusive, fully-paid, royalty-free, irrevocable, perpetual, transferable, and sublicensable license to use, copy, modify, adapt, distribute, and publicly display your UGC. You may not create, generate, or make available through the Software of the Services any UGC to which you do not have the right to grant Epic such license. In addition, you may not create, generate, or make available through the Software of the Services any UGC that is illegal or violates or infringes another’s rights, including intellectual property rights or privacy, publicity or moral rights. Epic reserves the right to take down any UGC in its discretion.

## **6. Feedback**

If you provide Epic with any Feedback, you hereby grant Epic a non-exclusive, fully-paid, royalty-free, irrevocable, perpetual, transferable, sublicensable license to reproduce, distribute, modify, prepare derivative works based on, publicly perform, publicly display, make, have made, use, sell, offer to sell, import, and otherwise exploit that Feedback for any purposes, for all current and future methods and forms of exploitation in any country. If any such rights may not be licensed under applicable law (such as moral and other personal rights), you hereby waive and agree not to assert all such rights. You understand and agree that Epic is not required to make any use of any Feedback that you provide. You agree that if Epic makes use of your Feedback, Epic is not required to credit or compensate you for your contribution. You represent and warrant that you have sufficient rights in any Feedback that you provide to Epic to grant Epic and other affected parties the rights described above. This includes but is not limited to intellectual property rights and other proprietary or personal rights.

## **7. Ownership/Third Party Licenses**

Epic and its licensors own all title, ownership rights, and intellectual property rights in the Software and Services. Epic, Epic Games, Unreal, Unreal Engine, and Fortnite, and their respective logos, are trademarks or registered trademarks of Epic and its affiliates in the United States of America and elsewhere. All rights granted to you under this Agreement are granted by

express license only and not by sale. No license or other rights shall be created hereunder by implication, estoppel, or otherwise.

The Software includes certain components provided by Epic's licensors. A list of credits and notices for third party components may be found in the game interface.

## **8. Disclaimers and Limitation of Liability**

**The Software (including any Game Currency and Content) and Services is provided on an "as is" and "as available" basis, "with all faults" and without warranty of any kind. Epic, its licensors, and its and their affiliates disclaim all warranties, conditions, common law duties, and representations (express, implied, oral, and written) with respect to the Software and Services, including without limitation all express, implied, and statutory warranties and conditions of any kind, such as title, non-interference with your enjoyment, authority, non-infringement, merchantability, fitness or suitability for any purpose (whether or not Epic knows or has reason to know of any such purpose), system integration, accuracy or completeness, results, reasonable care, workmanlike effort, lack of negligence, and lack of viruses, whether alleged to arise under law, by reason of custom or usage in the trade, or by course of dealing. Without limiting the generality of the foregoing, Epic, its licensors, and its and their affiliates make no warranty that (1) the Software or Services will operate properly, (2) that the Software or Services will meet your requirements, (3) that the operation of the Software or Services will be uninterrupted, bug free, or error free in any or all circumstances, or (4) that any defects in the Software or Services can or will be corrected. Any warranty against infringement that may be provided in Section 2-312 of the Uniform Commercial Code or in any other comparable statute is expressly disclaimed. Epic, its licensors, and its and their affiliates do not guarantee continuous, error-free, virus-free, or secure operation of or access to the Software or Services. This paragraph will apply to the maximum extent permitted by applicable law.**

**To the maximum extent permitted by applicable law, neither Epic, nor its licensors, nor its or their affiliates, nor any of Epic's service providers (collectively, the "Epic Parties"), shall be liable in any way for any loss of profits or any indirect, incidental, consequential, special, punitive, or exemplary damages, arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services, or the delay or inability to use or lack of functionality of the Software or Services, even in the event of an Epic Party's fault, tort (including negligence), strict liability, indemnity, product liability, breach of contract, breach of warranty, or otherwise and even if an Epic Party has been advised of the possibility of such damages. Further, to the maximum extent permitted by applicable law, the aggregate liability of the Epic Parties arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services will not exceed the total amounts you have paid (if any) to Epic for the Software (including any Game Currency or Content) during the twelve (12) months immediately preceding the events giving rise to such liability. These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation.**

**Notwithstanding the foregoing, some countries, states, provinces or other jurisdictions do not allow the exclusion of certain warranties or the limitation of liability as stated above, so the above terms may not apply to you. Instead, in such jurisdictions, the foregoing exclusions and limitations shall apply only to the extent permitted by the laws of such jurisdictions. Also, you may have additional legal rights in your jurisdiction, and nothing in this Agreement will prejudice the statutory rights that you may have as a consumer of the Software or Services.**

## **9. Indemnity**

You agree to indemnify, pay the defense costs of, and hold Epic, its licensors, its and their affiliates, and its and their employees, officers, directors, agents, contractors, and other representatives harmless from all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs, and expert witnesses' fees) that arise from or in connection with (a) any claim that, if true, would constitute a breach by you of this Agreement or negligence by you, or (b) any act or omission by you in using the Software (including any Game Currency or Content) or Services. You agree to reimburse Epic on demand for any defense costs incurred by Epic and any payments made or loss suffered by Epic, whether in a court judgment or settlement, based on any matter covered by this Section 9.

If you are prohibited by law from entering into the indemnification obligation above, then you assume, to the extent permitted by law, all liability for all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs and expert witnesses' fees) that are the stated subject matter of the indemnification obligation above.

## **10. Privacy**

By downloading or using the Software, you consent to the data collection and usage terms in Epic's privacy policy, as it may be updated from time to time. The privacy policy is available at <https://www.epicgames.com/privacypolicy>.

## **11. Termination**

Without limiting any other rights of Epic, this Agreement will terminate automatically without notice if you fail to comply with any of its terms and conditions. You may also terminate this Agreement by deleting the Software. Upon any termination, the License will automatically terminate, you may no longer exercise any of the rights granted to you by the License, and you must destroy all copies of the Software in your possession.

**Except to the extent required by law, all payments and fees are non-refundable under all circumstances, regardless of whether or not this Agreement has been terminated.**

Sections 2, 5-14, and 16-18 will survive any termination of this Agreement.

## **12. Governing Law and Jurisdiction**

You agree that this Agreement will be deemed to have been made and executed in the State of North Carolina, U.S.A., and any dispute will be resolved in accordance with the laws of North Carolina, excluding that body of law related to choice of laws, and of the United States of America. Any action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in the Superior Court of Wake County, State of North Carolina or the United States District Court for the Eastern District of North Carolina. You agree to the exclusive jurisdiction and venue of these courts. You waive any claim of inconvenient forum and any right to a jury trial. The Convention on Contracts for the International Sale of Goods will not apply. Any law or regulation which provides that the language of a contract shall be construed against the drafter will not apply to this Agreement.

### **13. Class Action Waiver**

**You agree not to bring or participate in a class or representative action, private attorney general action, or collective arbitration related to the Software (including any Game Currency or Content) or Services or this Agreement. You also agree not to seek to combine any action or arbitration related to the Software or Services or this Agreement with any other action or arbitration without the consent of all parties to this Agreement and all other actions or arbitrations.**

### **14. U.S. Government Matters**

The Software is a “Commercial Item” (as defined at 48 C.F.R. §2.101), consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” (as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable). The Software is being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to other licensees under this Agreement.

You represent and warrant to Epic that you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a “terrorist supporting” country, and that you are not listed on any U.S. Government list of prohibited or restricted parties.

### **15. Amendments of this Agreement**

**Epic may issue an amended Agreement at any time in its discretion by posting the amended Agreement on its website or by providing you with digital access to the amended Agreement when you next access the Software. If any amendment to this Agreement is not acceptable to you, you may terminate this Agreement and must stop using the Software. Your continued use of the Software will demonstrate your acceptance of the amended Agreement.**

### **16. No Assignment**

You may not, without the prior written consent of Epic, assign, transfer, charge, or sub-contract all or any of your rights or obligations under this Agreement, and any attempt without that

consent will be null and void. If restrictions on transfer of the Software in this Agreement are not enforceable under the law of your country, then this Agreement will be binding on any recipient of the Software. Epic may at any time assign, transfer, charge, or sub-contract all or any of its rights or obligations under this Agreement.

## 17. Definitions

As used in this Agreement, the following capitalized words have the following meanings:

**“Confidential Information”** means any non-public information related to the Software, including without limitation information related to gameplay or other content, Game Currency, Content, the Services, your own feedback and comments, and the feedback or comments of any other licensee of the Software or any Epic representative.

**“Content”** means any virtual items or other content that Epic makes available for you to access or download through or in connection with the Software.

**“Epic”** means, depending on the location of your primary residence:

- a. Epic Games, Inc., a Maryland Corporation having its principal business offices at Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A.; or
- b. Epic Games International S.à r.l., a Luxembourg Société à Responsabilité Limitée, located at Atrium Business Park, 33 rue du Puits Romain, L8070 Bertrange, Grand-Duchy of Luxembourg, acting through its Swiss branch, having its principal business offices at Lindenstrasse 16, 6340 Baar, Switzerland.

**“Feedback”** means any feedback or suggestions that you provide to Epic regarding the Software, Services or other Epic products and services.

**“Services”** means any services made available to you through the Software, including services to acquire, maintain and use Game Currency and Content.

**“Software”** means the proprietary software application known as Fortnite, and any patches, updates, and upgrades to the application, and all related content and documentation made available to you by Epic under this Agreement, including but not limited to all software code, titles, themes, objects, characters, names, dialogue, catch phrases, locations, stories, artwork, animation, concepts, sounds, audio-visual effects, methods of operation, and musical compositions that are related to the application, and any copies of any of the foregoing. Software specifically includes all Game Currency and Content for which you have paid the associated fee or otherwise acquired a license under Section 4.

## 18. Miscellaneous

This Agreement and any document or information referred to in this Agreement constitute the entire agreement between you and Epic relating to the subject matter covered by this Agreement.



All other communications, proposals, and representations with respect to the subject matter covered by this Agreement are excluded.

The original of this Agreement is in English; any translations are provided for reference purposes only. You waive any right you may have under the law of your country to have this Agreement written or construed in the language of any other country.

This Agreement describes certain legal rights. You may have other rights under the laws of your jurisdiction. This Agreement does not change your rights under the laws of your jurisdiction if the laws of your jurisdiction do not permit it to do so. Limitations and exclusions of warranties and remedies in this Agreement may not apply to you because your jurisdiction may not allow them in your particular circumstance. In the event that certain provisions of this Agreement are held by a court or tribunal of competent jurisdiction to be unenforceable, those provisions shall be enforced only to the furthest extent possible under applicable law and the remaining terms of this Agreement will remain in full force and effect.

Any act by Epic to exercise, or failure or delay in exercise of, any of its rights under this Agreement, at law or in equity will not be deemed a waiver of those or any other rights or remedies available in contract, at law or in equity.

You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated.

Epic's obligations are subject to existing laws and legal process, and Epic may comply with law enforcement or regulatory requests or requirements despite any contrary term in this Agreement.

# **EXHIBIT D**



**Re: [4-7072000019403] New Copyright Counter-Notification**

YouTube <copyright@youtube.com>

Tue, Oct 17, 2017 at 11:15 AM



We received the attached counter notification in response to a complaint you filed with us.

We're providing you with the counter notification and await evidence (in not more than 10 business days) that you've filed an action seeking a court order against the counter notifier to restrain the allegedly infringing activity. In most cases, such evidence would include a lawsuit against the uploader who filed the counter notification, which names the specific YouTube URL(s) at issue.

If we don't receive notice from you, we may reinstate the material to YouTube.

If you have any questions, please contact [copyright@youtube.com](mailto:copyright@youtube.com).

Counter-Notification as follows:

Videos included in counter-notification:

- <http://www.youtube.com/watch?v=uTx8ewXikaU>

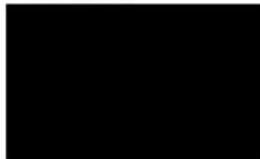
Display name of uploader: Sky Orbit

I did nothing rong this strike is all wrong i was modding in a video game that isnt against youtubes TOS Why was i striked!!!

I swear, under penalty of perjury, that I have a good faith belief the material was removed due to a mistake or misidentification of the material to be removed or disabled.

I consent to the jurisdiction of the Federal District Court for the district in which my address is located, or if my address is outside of the United States, the judicial district in which YouTube is located, and will accept service of process from the claimant.

Caleb Rogers



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